

**STATE OF CONNECTICUT**

**CONNECTICUT BOARD OF VETERINARY MEDICINE**

Michael Picard, D.V.M.  
License No. 001784  
Shoreline Animal Hospital  
Clinton, CT

Petition No. 970220-047-003

**MEMORANDUM OF DECISION**

***Procedural Background***

On April 13, 1998, the Department of Public Health ("the Department") issued a Statement of Charges ("the Charges") against the veterinary license of Michael Picard, D.V.M. ("respondent"). Dept. Exh. 1. The Charges and Notice of Hearing were sent to respondent by certified mail, return receipt requested. The Notice of Hearing notified the parties that a hearing would be held before the Connecticut Board of Veterinary Medicine (the "Board") on October 28, 1998. Dept. Exh. 2.

A hearing was held before the Board on October 28, 1998 and December 2, 1998. Respondent appeared and was represented by Attorney Raymond Rigat; the Department was represented by Attorney Roberta Swafford.

The Board conducted the hearing in accordance with Connecticut General Statutes Chapter 54 (the Uniform Administrative Procedure Act) and the Regulations of Connecticut State Agencies §§19a-9-1, *et seq.* All Board members involved in this decision received copies of the entire record and attest that they either heard the case or read the record in its entirety. This decision is based entirely on the record and the specialized professional knowledge of the Board in evaluating the evidence.

***Allegations and Answer***

1. In paragraph 1 of the Charges, the Department alleges that respondent is, and has been at all times referenced in the Statement of Charges, the holder of Connecticut Veterinary license no. 001784. Respondent admits this allegation.
2. In paragraph 2 of the Charges, the Department alleges that in approximately November of 1996, respondent provided negligent care to a puppy by (1) failing to personally examine the puppy on its second visit to his office, by (2) relying on an inadequate examination by a veterinary technician when determining

appropriate treatment, (3) failing to administer appropriate diagnostic testing. Respondent denies each of these allegations.

3. In paragraph 3 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, §20-202(2). Respondent denies this allegation.
4. The Department requests that the Board, as authorized by §§19a-17 and 20-202 of the Connecticut General Statutes, revoke or order other disciplinary action against the veterinary license of Michael Picard as it deems appropriate and consistent with law.

### *Findings of Fact*

1. Respondent is, and has been at all times referenced in the Charges, the holder of Connecticut veterinary license no.001784. Jt. Exh. I; Rt. Exh. A.
2. Respondent owns and operates Shoreline Animal Hospital, Clinton, CT (the "hospital"). Jt. Exh. I.
3. On November 22, 1996, Sue Marchini ("Marchini") brought four puppies to the hospital. Marc Sminkey ("Sminkey"), a veterinary technician, examined the puppies and administered vaccinations. Jt. Exh. I; Dept. Exhs. 5, 6; Tr. 10/28/98, 39.
4. On November 22, 1996, respondent did not enter the examination room. Tr. 12/2/98, 31.
5. Sminkey has never been issued a license by the State of Connecticut to practice veterinary medicine. Jt. Exh. I; Dept. Exh. 10.
6. On November 25, 1996, one of the puppies had diarrhea and vomiting. Marchini's husband, brought the female puppy back to the hospital. Jt. Exh. I; Dept. Exhs. 5, 6; Tr. 10/28/98, 39, 49.
7. Sminkey examined the puppy and brought it to the back of the facility to consult with respondent. Jt. Exh. I; Dept. Exhs. 5, 6.
8. The physical examination revealed an elevated temperature of 103.2 degrees, with normal pulse, respiration, and abdominal palpitation. Dept. Exh. 7.
9. The puppy was diagnosed with gastroenteritis. Jt. Exh. I.

10. Sminkey administered an injection of penicillin and nemex, a deworming medication. Mr. Marchini was also given amoxicillin to give the puppy at home. Jt. Exh. I; Dept. Exhs. 5, 6, 7; Tr. 10/28/98, 40.
11. On November 26, 1996, the puppy did not improve. Tr. 10/28/98, 40.
12. On November 27, 1996, the puppy still had not improved and Marchini returned to the hospital. Jt. Exh. I.
13. On November 27, 1996, Sminkey examined the puppy, and consulted with respondent. Jt. Exh. I; Tr. 10/28/98, 42, 60; Tr. 12/2/98, 10-11.
14. On November 27, 1996, the respondent's records reflect that (1) the puppy's pulse and respiration were normal; (2) the capillary refill time was normal; (3) there was an elevated temperature of 104 degrees; (4) the puppy was described as "thin," with good hydration and a normal abdomen; (5) she was slightly depressed, and (6) otherwise alert and responsive. The diagnosis remained gastroenteritis. Dept. Exh. 7.
15. Instead of examining the puppy, respondent relied on Sminkey's examination to determine treatment. Jt. Exh. I; Tr. 12/2/98, 9-10.
16. Sminkey administered an injection of the antibiotic gentocin (20 mg.) and the steroid, dexamethasone (1 mg.). Respondent changed the oral antibiotic to clavamox. Jt. Exh. I; Dept. Exhs. 6, 7; Tr. 10/28/98, 43, 51, 61.
17. Marchini requested that respondent perform blood tests and a radiograph. Respondent deemed those tests unnecessary based on Sminkey's examination. Jt. Exh. I; Tr. 10/28/98, 43-44; Tr. 12/2/98, 15.
18. Respondent admits that he neither saw nor examined the puppy. Instead, he observed Sminkey's examination by video while performing surgery. Tr. 10/28/98, 63; Tr. 12/2/98, 37-38.
19. Marchini was not given the option of waiting for respondent to complete the surgery so that he could personally examine her puppy. Tr. 10/28/98, 73.
20. Ms. Marchini was informed that the Hospital would be closed for the holiday weekend. Jt. Exh. I.
21. On November 28, 1996, the puppy appeared to be slightly improved. Tr. 10/28/98, 45.

22. Respondent generated the entire medical record, including those notations regarding Sminkey's examination and administering of injections to the puppies. Tr. 10/28/98, 70-71; Tr. 12/2/98, 24.
23. On November 29, 1996, the puppy's condition deteriorated. Marchini called other veterinarians in her area since respondent's office was closed for the holiday weekend. Tr. 10/28/98, 45.
24. On November 29, 1996, while en route to Robert Fair, D.V.M. at Killingworth Animal Hospital, the puppy died. Jt. Exh. I; Dept. Exhs. 5, 11; Tr. 10/28/96, 46.
25. According to the autopsy Dr. Fair performed, the puppy's bowel had ruptured and she died of peritonitis. This diagnosis was confirmed by tissue samples which Dr. Fair sent to Tufts School of Veterinary Medicine. Jt. Exh. I; Dept. Exh. 5, 11, 12.

### ***Discussion and Conclusions of Law***

Section 20-202 of the Connecticut General Statutes provides in pertinent part:

“. . . [the Connecticut Board of Veterinary Medicine] . . . may take any of the actions set forth in section 19a-17 [with] . . . 2) proof that the holder of such license or certificate has been unfit or incompetent or has been guilty of cruelty, unskillfulness or negligence towards animals and birds . . . .”

The Department bears the burden of proof by a preponderance of the evidence in this matter. *Steadman v. Securities and Exchange Commission*, 450 U.S. 91, 101 S. Ct. 999, *reh'g denied*, 451 U.S. 9333 (1981); *Swiller v. Commissioner of Public Health*, CV 950705601, Superior Court, J.D. Hartford/New Britain at Hartford, Memorandum filed October 10, 1995.

A preponderance of the evidence establishes that in November of 1996, respondent provided negligent care to the puppy by (1) failing to personally examine her on November 27, 1996, (2) relying on an inadequate examination by a veterinary technician to determine appropriate treatment, and (3) failing to perform appropriate diagnostic testing, as alleged in the Charges. FF. 4, 7, 13, 15, 17, 18. In reaching this determination, the Board relies upon the training and experience of its members (*Pet v. Department of Health Services*, 228 Conn. 651, 667 (1994)) and on the testimony of John Roumanis D.V.M., the Department's expert witness, who completed a veterinary

residency in cardiology in 1981, and has been in the practice of general veterinary medicine and cardiology since 1981. Tr. 10/28/96, 93.

On November 25, 1996 and November 27, 1996, Sminkey examined the puppy-- not respondent. FF. 13. Respondent explains that because he was in surgery and the owner was late he did not conduct the examination himself. This explanation is wholly insufficient and does not excuse respondent's negligence. The owner should have been given the opportunity of waiting until respondent was available to perform the examination. FF. 19.

Respondent's reliance on Sminkey's examination to determine appropriate treatment also constitutes negligence. Moreover, respondent negligently allowed Sminkey to perform the physical examination and administer shots without direct supervision in violation of §20-196(13) of the Connecticut General Statutes. FF. 3, 5, 7, 10, 13, 15, 16, 18.

Finally, on November 27, 1996, when the puppy returned for the second time without improvement, respondent failed to perform appropriate diagnostic testing. Under those circumstances, blood tests and an a radiograph should not only have been performed but the owner specifically requested it. FF. 17. Respondent's failure to perform these tests also constitutes neglect.

The Board finds that the Department met its burden of proof by a preponderance of the evidence that respondent was guilty of unskillfulness or negligence towards an animal as alleged in paragraphs 1, 2 and 3 of the Charges. Accordingly, respondent's license is subject to discipline pursuant to §20-202(2) of the Connecticut General Statutes.

### ***Order***

Pursuant to the authority vested in it by §§19a-17 and 20-202 of the Connecticut General Statutes, the Board makes the following order in the case against Michael. Picard, D.V.M., veterinary license number 001784:

1. Respondent shall pay a civil penalty in the amount of two thousand dollars (\$2,000.00) by certified or cashier's check payable to "Treasurer, State of

Connecticut.” The check shall reference the Petition Number on the face of the check, and shall be payable within thirty days of the effective date of this Decision.

2. Respondent’s license shall be placed on probation for a period of one (1) year, under the following terms and conditions:
  - a. During the probationary period, respondent shall submit a quarterly report to the Department attesting that all animals examined in his practice during the preceding quarter were examined and diagnosed by a veterinarian licensed by the state of Connecticut.
  - b. If a veterinarian other than respondent examines any animal, he shall provide the name of the animal, the type of animal, the name of the animal’s owner, the date, the nature of the examination, and the name of the veterinarian to the Department in the quarterly report.
3. All correspondence and reports shall be addressed to:

Bonnie Pinkerton, Nurse Consultant  
Department of Public Health  
Division of Health System Regulation  
410 Capitol Avenue, MS #12HSR  
P.O. Box 340308  
Hartford, CT 06134-0308
4. Respondent shall pay all costs necessary to comply with this Order.
5. Any alleged violation of this Order shall result in the following procedures at the Department’s discretion:

- a. Provided that there has been no prior written modification of this Order, the Department shall notify respondent in writing, by first-class mail, that the term(s) of this Decision have been violated.
- b. Said notification shall include the act(s) or omissions(s) which violate the terms of this Order.
- c. Respondent shall be allowed fifteen (15) days from the date of the mailing of the notification required in subparagraph (a), above, to demonstrate to the Department's satisfaction that he has complied with the terms of this Order or that he has cured the violation in question.
- d. If, by the required date, respondent does not demonstrate, to the Department's satisfaction, compliance with the requirement or cure the violation, he shall be entitled to a hearing before the Board, which shall make a final determination of the disciplinary action to be taken.
- e. The evidence at such hearing shall be limited to the alleged violation(s) of this Order.

Connecticut Board of Veterinary Medicine

August 25, 1994  
Date

Jordan R. Dann  
By: Jordan Dann, D.V.M., Chairman



# STATE OF CONNECTICUT

## DEPARTMENT OF PUBLIC HEALTH

August 25, 2000

Michael A. Picard, DVM  
c/o Shoreline Animal Hospital  
18 West Main Street  
Clinton, CT 06413-2053

re: Memorandum of Decision  
Petition No. 970220-047-003  
License No. 001784  
DOB [REDACTED]  
**Completion of Probation**

Dear Dr. Picard:

Please be advised that the probationary terms of the above-referenced Memorandum of Decision have been satisfied, effective 08/25/2000.

Notice will be sent to the Department's Licensure and Registration section to remove all restrictions on License No. 001784, related to the above-referenced Memorandum of Decision.

Sincerely,

A handwritten signature in cursive script that reads "Richard Goldman".

Richard Goldman  
Paralegal Specialist II  
Division of Health Systems Regulation

cc: D. Tomassone, PHSM  
B. Pinkerton, RNC



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